IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 53 OF 2005.

Smt. F. Rodrigues. .... Appellant.

Versus

1. Shri S.R. More (MD).

2. Shri M.R. More (Director)

3. Shri A.R. More (Director)
All above named having
Office at M/s Deccan
Express Transport Co. Pvt. Ltd.
Vasco-da-Gama, Goa. .... Respondents.

Ms. W. Coutinho, Public Prosecutor for the Appellant.

Shri Shivan Dessai, Advocate for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 14th SEPTEMBER, 2005.

ORAL JUDGMENT:

Admit. Heard forthwith.

2. This is the complainant-Labour Inspector's appeal against the discharge of the accused under Section 22A of the Minimum Wages Act 1948 r/w Rules 29(1)9, 29(2) and 29(5) of the Minimum Wages Rules, 1975.

3. Some facts are required to be set out to dispose of this appeal.

The complainant-Labour Inspector inspected the establishment of the accused on 30.3.01 and found that the said establishment had not maintained register of wages in Form X, had failed to issue wage slips to its employees in Form IX and had failed to maintain a muster roll in respect of its employees in From XI. Although the complaint does not state whether any notice to show cause was issued to the accused, it is stated by the learned P.P. that in fact a notice to show cause was issued to the accused as to why the accused should not be prosecuted for violation of the aforesaid provisions of the said Act and the said Rules, but no reply was received and consequently a complaint dated 20.8.01 was filed against the said accused. The respondents are the Managing Director and Directors of M/s Deccan Express Transport Company Pvt. Ltd.

4. After summons were issued to the said accused by the learned J.M.F.C., the accused on or about 21.1.02 by an application purporting to be an application under Section 245 of the Code of Criminal Procedure, 1973 (Code, for short) prayed for their discharge/acquittal. The said application was later on dismissed as withdrawn on 4.3.02. Later, on 4.3.02 the accused filed an application styling the same as an application for dismissal for the complaint and along with the said application, the accused filed registration certificate which showed that the establishment

of M/s Deccan Express Transport Co. was registered before the Chief Inspector appointed under the Motor Transport Workers Act, in the State of Maharashtra. It was also contended in the said application that in the past the complainant had filed similar complaints under the Shops and Establishments Act, 1973 which were dismissed by the Chief Judicial Magistrate, Margao.

5. The learned J.M.F.C. by his Order dated 17.1.03 raised a question whether the complaint was liable to be dismissed and answered the same in the affirmative. In answering the said question, the learned J.M.F.C. came to the conclusion that the accused was a Transport Company registered under the Motor Transport Workers Act, 1961 which fact was substantiated with the renewal certificate produced by the accused and it followed therefrom that the provisions of the Minimum Wages Act, 1948 would not apply to the said establishment as the requirements under the Minimum Wages Act, 1948 were covered by the Motor Transport Workers Act, 1961 and therefore the accused could not be charged for the said offence punishable under Section 22A of the Minimum Wages Act, 1947. In coming to the said conclusion, the learned J.M.F.C. relied upon the Judgment/Order dated 7.8.92 passed by the Chief Judicial Magistrate, Margao in Criminal Cases No.357/L/87 and 358/L/87.

6. As the Order dated 17.1.03 of the learned J.M.F.C., Vasco-da-Gama was styled as an Order of discharge of the accused, the complainant preferred a revision to the Court of Sessions, Margao. However, the learned Sessions Judge, by his Order dated 18.11.04 came to the conclusion that the discharge of the respondents/accused amounted to acquittal of the accused since the offences were triable as a summons case and therefore rejected the revision as not maintainable.

7. The short and moot question arising in this appeal is whether on the face of the averments made by the appellant in the complaint, the learned J.M.F.C. was entitled to acquit the accused ?

8. Shri Dessai, the learned Advocate appearing on behalf of the accused has submitted that the complaint does not show that the Minimum Wages Act, 1948 or the Rules framed thereunder were applicable to the establishment of the accused and therefore the learned J.M.F.C. was entitled to dismiss the complaint against the accused and/or discharge or acquit the accused as done by him in this case. Shri Dessai has further submitted that the learned J.M.F.C. was entitled to invoke his jurisdiction under S.258 of the Code in the proceedings which he did in the case at hand.

9. On the other hand, Ms. Coutinho, the learned P.P. has submitted that the learned J.M.F.C. could not have discharged the accused and/or acquitted them at the nascent stage of the proceedings and therefore this is a fit case to set aside the order of the J.M.F.C. and remand the case for re-trial.

10. Admittedly, the complaint in this case was filed by a Labour Inspector who was a public servant acting in the discharge of his official duties. The procedure for inquiry into such a complaint is indicated in S.251 of the Code which deals with the trial of summons cases by Magistrates. S.251 provides that when in a summons case, the accused appears or is brought before a Magistrate, the particulars of the offence of which he is accused of shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. It is not the case of the learned J.M.F.C. that the complaint itself did not disclose any offence alleged against the accused. In fact, a perusal of the complaint, showed that the establishment of the accused had failed to maintain certain records as contemplated by the said Rules and therefore had committed offences punishable under Section 22A of the Minimum Wages Act, 1948. In the light of the said averments in the complaint it was not for the learned J.M.F.C. to find out whether the said Minimum Wages Act, 1948

applied to the establishment of the accused or not after referring to and relying upon the certificate of registration of the establishment of the accused at that stage. The accused is not entitled to produce any documents in support of his defence at that stage of the inquiry or trial by the J.M.F.C. All that the learned J.M.F.C. was required at that stage was to find out whether the averments in the complaint disclosed the offences alleged against the accused, which in the facts stated in the complaint in this case did disclose the offences namely that the accused had failed to maintain certain records. Whether the provisions of the said Minimum Wages Act, 1948 or for that matter the Rules framed thereunder were applicable or not to the establishment of the accused is a matter which could have been examined only after the complainant was examined and in the course of such examination the accused had produced documents in support of the plea which the accused were entitled to take. Suffice it to observe that in summons case the accused is not entitled to produce any document to dislodge the case of the complainant as stated in the complaint and once the allegations in the complaint make out a prima facie offence which a Magistrate is entitled to try the learned Magistrate had no option but to proceed in accordance with the procedure governing the trial of the summons case provided under Chapter XX of the Code. The learned J.M.F.C. has not stated in the impugned Order that he has stopped the

proceeding under Section 258 of the Code. The provisions of S.258 of the Code were certainly inapplicable to the case of the complainant because as the said section shows, the provisions are applicable to a case filed otherwise than upon a complaint. Likewise the provisions of S.245 of the Code were also not applicable and this probably was realised by the accused themselves when they withdrew the said application. Suffice it to observe that the provisions of S.245 of the Code would come into play at a stage when the evidence of the complainant in a warrant case is recorded under S.244 of the Code and not otherwise.

11. In view of the above, the acquittal of the accused by allowing the accused to produce a document and relying on the same to dislodge the allegations in the complaint cannot be justified. The accused has no right to produce a document at the stage of Section 251 of the Code to get the complaint dismissed. The impugned order of the learned J.M.F.C. therefore deserves to be set aside. The learned J.M.F.C. was bound to proceed with the trial of the accused under S.251 of the Code. Hence the appeal is allowed. The Order dated 17.1.03 in Criminal Cases No. 46 and 47/L/2001/D discharging/acquitting the accused is hereby set aside. The learned Magistrate is directed to try the accused in accordance with law

and following the provisions of the Code indicated hereinabove. No order as to costs. The accused are hereby directed to remain present before the learned J.M.F.C., Vasco-da-Gama, on 3rd October, 2005 at 10.30 a.m.

N. A. BRITTO, J.

sl.